

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Equal Employment Opportunity
Commission,

Plaintiff,

vs.

Gencare, d/b/a The Carillons,

Defendant.

CIV 08-01747-PHX-ECV
CONSENT DECREE

This is an action under the Age Discrimination in Employment Act to correct unlawful employment practices on the basis of age and to provide appropriate relief to Ellen Lang , Michael Chabak, Erwin Sieghart and a class of individuals, age 40 or older, whom Defendant terminated because of their age. The Equal Employment Opportunity Commission (“Plaintiff” or “Commission”) alleges that Defendant, Gencare, d/b/a The Carrillons (“Defendant”), terminated charging parties Ellen Lang, Michael Chabak, and Erwin Sieghart (“Charging Parties”) because of their age. The Defendant denies having discriminated against any employee by reason of age and further asserts that any terminations were instead based upon legitimate, non-discriminatory business reasons.

The parties do not object to the jurisdiction of the Court over this Action and waive their rights to a hearing and the entry of findings of fact and conclusions of law.

1 In the interest of resolving this matter, and as a result of having engaged in
2 comprehensive settlement negotiations, the parties have agreed that this action should be
3 resolved finally by entry of this Decree.

4 It is hereby ORDERED, ADJUDGED AND DECREED:

5 1. This Decree resolves all claims of the Commission and charging parties,
6 including but not limited to allegations of back pay, front pay, reinstatement, interest,
7 injunctive relief, attorney's fees and costs arising out of the issues in this lawsuit.

8 2. For the duration of this Decree, Defendant at its Arizona facilities shall be
9 enjoined from discriminating against its employees in terminations because of age or
10 from retaliation against any of the charging parties for filing a charge or otherwise
11 opposing discriminatory practices.

12 3. For the duration of the Decree, Defendant shall be enjoined from
13 purchasing any insurance policy which refuses or limits coverage to any of Defendant's
14 employees based on an employee's age.

15 4. Gencare shall make payments totaling fifty eight thousand dollars
16 (\$58,000) in back pay and liquidated damages in resolution of all claims asserted in this
17 case by all charging parties. These payments will be reported on a Form 1099 by January
18 31 of the year following the calendar year in which payment of the funds occurs.
19 Payments are due in two separate installments, one half due thirty days after the filing of
20 the Consent Decree and the other half due sixty days after the filing of the Consent
21 Decree.

22 5. The amounts set forth in paragraph 3 of this Decree shall be paid by
23 Gencare in the form of three cashier's checks or money orders (per installment), payable
24 to charging parties as set forth in Exhibit A. Such check or money order shall be mailed
25 directly by Gencare to the charging parties, at the addresses to be provided by the
26 Commission. Within three business days of the issuance of the check or money order,
27 Gencare shall submit a copy of the check or money order, and related correspondence, to
28 the United States Equal Employment Opportunity Commission, Regional Attorney, at
3300 North Central Avenue, Suite 690, Phoenix, Arizona, 85012.

1 obligation not to discriminate on the basis of age in employment decisions concerning the
2 continuing employment of current staff; and objective, non-discriminatory decision-
3 making and proper procedures for evaluations, reductions in force and layoffs.

4 13. The Commission, at its discretion, may designate Commission
5 representatives to attend and participate in any of the seminar-training sessions described
6 above, and the representatives shall have the right to attend and fully participate in all the
7 sessions.

8 14 Within 30 days of the entry of this decree, Gencare shall mail to the
9 Complainants a letter of reference which lists their dates of employment, position(s) held,
10 and salary.

11 15. Within sixty (60) days of the entry of this Decree, Gencare shall review
12 and modify, if necessary, its policies and practices that help assure a work environment
13 free from age discrimination for its employees and that allows employees to raise
14 concerns or complaints without retaliation about matters, whether alleged, perceived or
15 actual, made unlawful by the ADEA.

16 16. Within sixty (60) days of the entry of this Decree, Gencare shall ensure that
17 its equal employment opportunity training programs include specific training on age
18 discrimination in all personnel actions, including hiring decisions.

19 17. Gencare shall report in writing to the Regional Attorney of the
20 Commission's Phoenix District Office at 3300 N. Central Ave., Suite 690, Phoenix,
21 Arizona 85012, beginning six (6) months from the date of the entry of this Decree, and
22 thereafter every six (6) months for the duration of the Decree the following information:

23 A. Any changes, modifications, revocations, or revisions to its policies and
24 procedures made pursuant to this Decree.

25 B. The name, job title, social security number, and last known home telephone
26 number and address of any individual employed by Gencare who has brought allegations
27 of denial of hiring, transfer or re-hiring opportunities based on age discrimination to the
28 attention of Gencare's Human Resources Department against any Gencare management
official, agent, or employee, whether the allegations are communicated through formal or

1 informal complaint reporting mechanisms, whether telephonic, recorded, verbal or oral,
2 during the six (6) months preceding the report. The nature of the complaint, investigatory
3 efforts made by Gencare and the corrective action, if any, shall be specified.

4 C. Confirmation that Gencare's equal employment opportunity trainings listed
5 in this Decree occurred.

6 D. Gencare shall maintain all records concerning its implementation of this
7 Consent Decree during the term of the Decree. Gencare shall also maintain, and keep
8 available for inspection and copying by EEOC, all records relating to layoffs of its
9 employees at Gencare.

10 E. Confirmation that the Notice required in paragraph 5 of this Decree was
11 posted and the locations where it was posted.

12 18. The parties shall each bear their own costs, and the Commission and
13 Gencare shall each bear their own attorneys' fees incurred as a result of this action
14 through the filing of this Decree.

15 19. The duration of this Decree shall be eighteen (18) months from its entry.
16 This Court shall retain jurisdiction over this action for the duration of the Decree, during
17 which the Commission may petition this Court for compliance with this Decree.

18 20. This Decree shall expire by its own terms at the end of eighteen (18)
19 months from the date of entry, without further action by the parties.

20 21. If any provision(s) of this Consent Decree are found to be unlawful, only
21 the specific provision(s) in question shall be affected and the other provisions shall
22 remain in full force and effect.

23 22. The parties agree to entry of this Decree, subject to final approval by the
24 Court.

25 23. This Decree shall remain in effect for a period of eighteen (18) months. If a
26 question of compliance with the non-monetary terms of the Decree arises, the
27 Commission shall give written notice to Defendant of its alleged non-compliance and
28 Defendant shall have a minimum of ninety (90) days to cure any non-compliance. If the
Commission believes that the alleged non-compliance has not been cured, the parties

1 shall meet and confer to exhaust these attempts to resolve the issue of non-compliance
2 This Court shall retain jurisdiction over this action for the duration of the Decree.

3 Dated this 11th day of February, 2009.

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6 A handwritten signature in black ink, appearing to read 'Edward C. Voss', is written over a horizontal line.

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8 Edward C. Voss
9 United States Magistrate Judge
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1 APPROVED AND CONSENTED TO THIS 20TH DAY OF JANUARY, 2009.

2 GENCARE, INC.

3 s/Leon Grundstein

4 President

5 Gencare, d/b/a The carillons

6 s/Jean E. Huffington

7 Jean E. Huffington

8 McKay Huffington & TYLER< PLLC

9 14205 SE 36th Street, Ste. 325

10 Bellevue, WA 98006

11 Attorney for Defendants

s/Mary Jo O'Neill

MARY JO O'NEILL

Regional Attorney

P. David Lopez

P. David Lopez

Supervisor Trial Attorney

EQUAL EMPLOYMENT

OPPORTUNITY COMMISSION

Phoenix District Office

3300 N. Central Ave., Suite 690

Phoenix, Arizona 85012

Attorneys for Plaintiff

Exhibit A

NAME	AMOUNT
Erwin Sieghart	\$5,000.00
Ellen Lang	\$32,000.00
Michale Chabak	\$21,000.00
TOTAL	\$58,000.00

Exhibit B

NOTICE TO ALL EMPLOYEES OF Gen-Care, d/b/a The Carillons

It is unlawful under federal and state law to discriminate against an employee on the basis of age. It is also unlawful to retaliate against any person because the person protested discriminatory practices or contacted the EEOC.

Gen-Care will not discriminate against any employee on the basis of age and will not retaliate against any employee.

If you believe you have been discriminated against by Gen-Care, you have the right to seek assistance from or have the right to file a charge with the EEOC or ACRD if you believe you are being discriminated against. These agencies may be contacted at the following addresses:

(1) EEOC, 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012, (602) 640-5000; or

(2) Arizona Civil Rights Division (ACRD) of the Attorney General's Office, 1275 W. Washington, Phoenix, Arizona, 85007, (602) 255-5263.

No Retaliation Clause. No action may be taken against you by any supervisory or management official of Gen-Care for (1) opposing discriminatory practices made unlawful by federal law, (2) filing a charge or assisting or participating in the filing of a charge of discrimination, or (3) assisting or participating in an investigation or proceeding brought under the ADEA. Should any such retaliatory actions be taken against you, you should immediately contact the EEOC or the ACRD and the address or telephone numbers listed above.

Dated: _____

President
Gen-Care